

## Employment and Training Administration, Labor

§ 656.5

worker situation. Lapsed time is not the same as work time. For example, 30 days is approximately 1 month of lapsed time and not six 5-day work weeks, and 3 months refers to 3 calendar months and not 90 work days. The various levels of specific vocational preparation are provided below.

Level	Time
1 .....	Short demonstration.
2 .....	Anything beyond short demonstration up to and including 30 days.
3 .....	Over 30 days up to and including 3 months.
4 .....	Over 3 months up to and including 6 months.
5 .....	Over 6 months up to and including 1 year.
6 .....	Over 1 year up to and including 2 years.
7 .....	Over 2 years up to and including 4 years.
8 .....	Over 4 years up to and including 10 years.
9 .....	Over 10 years.

*State Workforce Agency (SWA)*, formerly known as *State Employment Security Agency (SESA)*, means the state agency that receives funds under the Wagner-Peyser Act to provide prevailing wage determinations to employers, and/or administers the public labor exchange delivered through the state's one-stop delivery system in accordance with the Wagner-Peyser Act.

*United States*, when used in a geographic sense, means the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam.

*United States worker* means any worker who is:

- (1) A U.S. citizen;
- (2) A U.S. national;
- (3) Lawfully admitted for permanent residence;
- (4) Granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C. 1160(a), 1161(a), or 1255a(a)(1);
- (5) Admitted as a refugee under 8 U.S.C. 1157; or
- (6) Granted asylum under 8 U.S.C. 1158.

[69 FR 77386, Dec. 27, 2004, as amended at 71 FR 35522, June 21, 2006]

### Subpart B—Occupational Labor Certification Determinations

#### § 656.5 Schedule A.

We have determined there are not sufficient United States workers who are able, willing, qualified, and available for the occupations listed below on *Schedule A* and the wages and working

conditions of United States workers similarly employed will not be adversely affected by the employment of aliens in *Schedule A* occupations. An employer seeking a labor certification for an occupation listed on *Schedule A* may apply for that labor certification under § 656.15.

#### SCHEDULE A

##### (a) Group I:

(1) Persons who will be employed as physical therapists, and who possess all the qualifications necessary to take the physical therapist licensing examination in the state in which they propose to practice physical therapy.

(2) Aliens who will be employed as professional nurses; and

(i) Who have received a Certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS);

(ii) Who hold a permanent, full and unrestricted license to practice professional nursing in the state of intended employment; or

(iii) Who have passed the National Council Licensure Examination for Registered Nurses (NCLEX-RN), administered by the National Council of State Boards of Nursing.

(3) Definitions of Group I occupations:

(i) *Physical therapist* means a person who applies the art and science of physical therapy to the treatment of patients with disabilities, disorders and injuries to relieve pain, develop or restore function, and maintain performance, using physical means, such as exercise, massage, heat, water, light, and electricity, as prescribed by a physician (or a surgeon).

(ii) *Professional nurse* means a person who applies the art and science of nursing which reflects comprehension of principles derived from the physical, biological and behavioral sciences. Professional nursing generally includes making clinical judgments involving the observation, care and counsel of persons requiring nursing care; administering of medicines and treatments prescribed by the physician or dentist; and participation in the activities for the promotion of health and prevention of illness in others. A program of study for professional nurses generally includes theory and practice in clinical

areas such as obstetrics, surgery, pediatrics, psychiatry, and medicine.

(b) Group II:

(1) *Sciences or arts (except performing arts)*. Aliens (except for aliens in the performing arts) of exceptional ability in the sciences or arts including college and university teachers of exceptional ability who have been practicing their science or art during the year prior to application and who intend to practice the same science or art in the United States. For purposes of this group, the term “science or art” means any field of knowledge and/or skill with respect to which colleges and universities commonly offer specialized courses leading to a degree in the knowledge and/or skill. An alien, however, need not have studied at a college or university in order to qualify for the Group II occupation.

(2) *Performing arts*. Aliens of exceptional ability in the performing arts whose work during the past 12 months did require, and whose intended work in the United States will require, exceptional ability.

### Subpart C—Labor Certification Process

#### § 656.10 General instructions.

(a) *Filing of applications*. A request for a labor certification on behalf of any alien who is required by the Act to be a beneficiary of a labor certification in order to obtain permanent resident status in the United States may be filed as follows:

(1) Except as provided in paragraphs (a)(2), (3), and (4) of this section, an employer seeking a labor certification must file under this section and § 656.17.

(2) An employer seeking a labor certification for a college or university teacher must apply for a labor certification under this section and must also file under either § 656.17 or § 656.18.

(3) An employer seeking labor certification for an occupation listed on *Schedule A* must apply for a labor certification under this section and § 656.15.

(4) An employer seeking labor certification for a sheepherder must apply for a labor certification under this section and must also choose to file under either § 656.16 or § 656.17.

(b) *Representation*. (1) Employers may have agents or attorneys represent them throughout the labor certification process. If an employer intends to be represented by an agent or attorney, the employer must sign the statement set forth on the *Application for Permanent Employment Certification* form: That the attorney or agent is representing the employer and the employer takes full responsibility for the accuracy of any representations made by the attorney or agent. Whenever, under this part, any notice or other document is required to be sent to the employer, the document will be sent to the attorney or agent who has been authorized to represent the employer on the *Application for Permanent Employment Certification* form.

(2)(i) It is contrary to the best interests of U.S. workers to have the alien and/or agents or attorneys for either the employer or the alien participate in interviewing or considering U.S. workers for the job offered the alien. As the beneficiary of a labor certification application, the alien can not represent the best interests of U.S. workers in the job opportunity. The alien's agent and/or attorney can not represent the alien effectively and at the same time truly be seeking U.S. workers for the job opportunity. Therefore, the alien and/or the alien's agent and/or attorney may not interview or consider U.S. workers for the job offered to the alien, unless the agent and/or attorney is the employer's representative, as described in paragraph (b)(2)(ii) of this section.

(ii) The employer's representative who interviews or considers U.S. workers for the job offered to the alien must be the person who normally interviews or considers, on behalf of the employer, applicants for job opportunities such as that offered the alien, but which do not involve labor certifications.

(3) No person under suspension or disbarment from practice before any court or before the DHS or the United States Department of Justice's Executive Office for Immigration Review is permitted to act as an agent, representative, or attorney for an employer and/or alien under this part.